

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ROBERT H. AYLOR, JR., On Behalf of	:	
Himself and All Others Similarly Situated,	:	
	:	
Plaintiff,	:	Civil Action No. 05-00222 (SLR)
	:	
v.	:	Related Cases:
	:	1:05-CV-00242 (SLR)
XYBERNAUT CORPORATION,	:	1:05-CV-00256 (SLR)
EDWARD G. NEWMAN, STEVEN A.	:	1:05-CV-00268 (SLR)
NEWMAN, M.D., AND THOMAS D.	:	1:05-CV-00310 (SLR)
DAVIS,	:	1:05-CV-00334 (SLR)
	:	
Defendants.	:	

**REPLY MEMORANDUM IN FURTHER SUPPORT OF THE AL MESNAD GROUP'S
MOTION FOR APPOINTMENT AS LEAD PLAINTIFF AND NOTICE OF NON-
OPPOSITION**

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The Al Mesnad Group¹ respectfully submits this reply memorandum and notice of non-opposition in further support of its motion for appointment as lead plaintiff (“Lead Plaintiff”) and approval of its selection of Cohen, Milstein, Hausfeld & Toll, P.L.L.C. (“Cohen Milstein”) and Murray, Frank & Sailor LLP (“Murray Frank”) as co-Lead Counsel and Prickett Jones & Elliott, P.A. (“Prickett Jones”) as Liaison Counsel under the Private Securities Litigation Reform Act of 1995, 15 U.S.C. § 78u-4(a)(3)(B).

INTRODUCTION

The Al Mesnad Group recently moved to be appointed Lead Plaintiff and to have its counsel Cohen Milstein and Murray Frank appointed Lead Counsel. Three other competing groups also moved, the Xybernaut Investor Group, the Fehrenbacher Group, and the James Group. The Al Mesnad Group filed a brief opposing all three groups’ bids for Lead Plaintiff.

Two competing movants, the Xybernaut Investors Group and the Fehrenbacher Group, filed briefs opposing the Al Mesnad Group’s bid for Lead Plaintiff and Lead Counsel.² However, on July 5, 2005, the Xybernaut Investors Group, the Fehrenbacher Group, and the James Group withdrew their oppositions to the Al Mesnad Group’s Lead Plaintiff and Lead Counsel motion. Moreover, the Fehrenbacher Group and the Xybernaut Investors Group stated in their filings that they will now support the Al Mesnad Group’s lead plaintiff application.

1 The Al Mesnad Group consists of the following: Joyce R. Starr; Edward Paige; Khalid Nassera Abdulla Al Mesnad; and Ebru Erguner-Dogan.

2 The James Group did not file a brief opposing the Al Mesnad Group’s (or any other group’s) bid for Lead Plaintiff and, accordingly, it apparently does not oppose the Al Mesnad Group’s motion. In fact, on July 5, 2005, the James Group filed a notice with the Court withdrawing its motion to be appointed Lead Plaintiff/Lead Counsel.

Consequently, the Al Mesnad Group's Lead Plaintiff and Lead Counsel motion stand (and should be treated as) unopposed.³

ARGUMENT

Where, as here, Lead Plaintiff and Lead Counsel motions stand unopposed, courts routinely grant those motions, especially where, as here, the movant demonstrated that it has the largest financial interest in the action and otherwise meets Rule 23's requirements. *See, e.g., Linn v. Allied Irish Banks, PLC.*, 2004 WL 2813133 at **5-7 (S.D.N.Y. Dec. 8, 2004) (granting unopposed Lead Plaintiff and Lead Counsel motion) (Exhibit A); *Nager v. Websecure, Inc.*, 1997 WL 773717 at *1 (D. Mass. Nov. 26, 1997) (same) (Exhibit B). In so doing, courts generally evaluate whether the named plaintiff or Lead Plaintiff movant possesses the largest financial interest in the case and qualifies as typical and adequate under Rule 23(a) of the Federal Rules of Civil Procedure. *See id.*

Here, for the reasons explained in the Al Mesnad Group's moving papers and opposition papers, which are incorporated here by reference, the Al Mesnad Group has shown that it possesses the largest financial interest in the case; that it can function effectively as a group to monitor counsel and control the litigation; that its claims are typical of the class; and that it and its counsel are adequate to represent the class. Under these circumstances, the Al Mesnad Group respectfully submits that its unopposed motion for appointment as lead plaintiff and its unopposed motion for approval of selection of co-lead counsel be granted.

³ A hearing on the Al Mesnad Group's unopposed motion for lead plaintiff has been scheduled for July 8, 2005 in the Eastern District of Virginia.

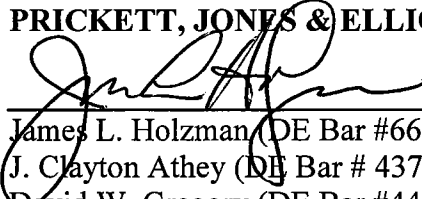
CONCLUSION

For the foregoing reasons, the Al Mesnad Group respectfully requests that the Court appoint it as Lead Plaintiff and approve the group's selection of Cohen, Milstein and Murray, Frank as co-Lead Counsel and Prickett Jones as Liaison Counsel.⁴

Dated: July 6, 2005

Respectfully submitted,

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⁴ The Al Mesnad Group further notes that no movant opposed its motion to consolidate these actions and, as a result, that motion should be granted also.

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CERTIFICATE OF SERVICE

I, James L. Holzman, hereby certify that on July 6, 2005, I electronically filed the foregoing **REPLY MEMORANDUM IN FURTHER SUPPORT OF THE AL MESNAD GROUP'S MOTION FOR APPOINTMENT AS LEAD PLAINTIFF AND NOTICE OF NON-OPPOSITION** with the Clerk of the Court using CM/ECF, which will send notification of such filing to the following:

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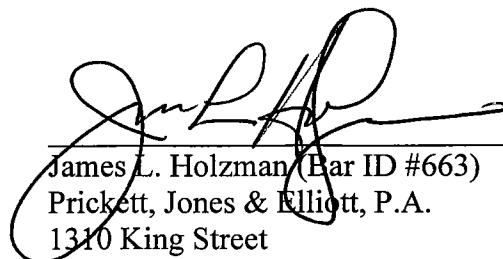
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